
SENATE BILL No. 174

DIGEST OF INTRODUCED BILL

Citations Affected: IC 3-11; IC 3-11.5-4; IC 3-11.7-5.

Synopsis: Absentee voting. Requires a voter casting an absentee ballot to provide information concerning the voter's identification before the absentee ballot is counted. Specifies that: (1) the voter must provide a description of and the identification number for the proof of identification the voter would submit if the voter were voting in person; or (2) if the voter does not provide a description of the proof of identification or the proof of identification does not have an identification number, the voter must provide the last four digits of the voter's Social Security number. Provides that if an absentee voter does not provide information concerning a voter's identification, the absentee ballot is treated as a provisional ballot. Repeals a provision that exempts an absentee voter from providing proof of identification.

Effective: January 1, 2009.

Young R Michael

January 8, 2008, read first time and referred to Committee on Local Government and Elections.

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Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

SENATE BILL No. 174

A BILL FOR AN ACT to amend the Indiana Code concerning elections.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 3-11-4-2, AS AMENDED BY P.L.103-2005,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JANUARY 1, 2009]: Sec. 2. (a) A voter who wants to vote by absentee
4 ballot must apply to the county election board for an official absentee
5 ballot. Except as provided in subsection (b), the voter must sign the
6 absentee ballot application.

7 (b) If a voter with disabilities is unable to sign the absentee ballot
8 application and the voter has not designated an individual to serve as
9 attorney in fact for the voter, the county election board may designate
10 an individual to sign the application on behalf of the voter. If an
11 individual applies for an absentee ballot as the properly authorized
12 attorney in fact for a voter, the attorney in fact must attach a copy of the
13 power of attorney to the application.

14 (c) A person may provide an individual with an application for an
15 absentee ballot with the following information already printed or
16 otherwise set forth on the application when provided to the individual:

17 (1) The name of the individual.



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(2) The voter registration address of the individual.

(3) The mailing address of the individual.

(4) The date of birth of the individual.

~~(5) The voter identification number of the individual.~~

(d) A person may not provide an individual with an application for an absentee ballot with the following information already printed or otherwise set forth on the application when provided to the individual:

(1) The address to which the absentee ballot would be mailed, if different from the voter registration address of the individual.

(2) In a primary election, the major political party ballot requested by the individual.

(3) In a primary or general election, the types of absentee ballots requested by the individual.

(4) The reason why the individual is entitled to vote an absentee ballot:

(A) by mail; or

(B) before an absentee voter board (other than an absentee voter board located in the office of the circuit court clerk or a satellite office);

in accordance with IC 3-11-4-18, IC 3-11-10-24, or IC 3-11-10-25.

(5) The information required under section 5.1(d) of this chapter to be provided by an individual requesting an absentee ballot.

(6) The voter identification number of the individual.

(e) If the county election board determines that an absentee ballot application does not comply with subsection (d), the board shall deny the application under section 17.5 of this chapter.

(f) A person who assists an individual in completing any information described in subsection (d) on an absentee ballot application shall state under the penalties for perjury the following information on the application:

(1) The full name, residence and mailing address, and daytime and evening telephone numbers (if any) of the person providing the assistance.

(2) The date this assistance was provided.

(3) That the person providing the assistance has complied with Indiana laws governing the submission of absentee ballot applications.

(4) That the person has no knowledge or reason to believe that the individual submitting the application:

(A) is ineligible to vote or to cast an absentee ballot; or

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1 (B) did not properly complete and sign the application.

2 (g) This subsection does not apply to an employee of the United
3 States Postal Service or a bonded courier company acting in the
4 individual's capacity as an employee of the United States Postal Service
5 or a bonded courier company. A person who receives a completed
6 absentee ballot application from the individual who has applied for the
7 absentee ballot shall file the application with the appropriate county
8 election board not later than:

9 (1) noon seven (7) days after the person receives the application;
10 or

11 (2) the deadline set by Indiana law for filing the application with
12 the board;

13 whichever occurs first.

14 (h) This subsection does not apply to an employee of the United
15 States Postal Service or a bonded courier company acting in the
16 individual's capacity as an employee of the United States Postal Service
17 or a bonded courier company. A person filing an absentee ballot
18 application, other than the person's own absentee ballot application,
19 must sign an affidavit at the time of filing the application. The affidavit
20 must be in a form prescribed by the commission. The form must
21 include the following:

22 (1) A statement of the full name, residence and mailing address,
23 and daytime and evening telephone numbers (if any) of the person
24 submitting the application.

25 (2) A statement that the person filing the affidavit has complied
26 with Indiana laws governing the submission of absentee ballot
27 applications.

28 (3) A statement that the person has no knowledge or reason to
29 believe that the individual whose application is to be filed:

30 (A) is ineligible to vote or to cast an absentee ballot; or

31 (B) did not properly complete and sign the application.

32 (4) A statement that the person is executing the affidavit under the
33 penalties of perjury.

34 (5) A statement setting forth the penalties for perjury.

35 (i) The county election board shall record the date and time of the
36 filing of the affidavit.

37 SECTION 2. IC 3-11-4-5.1, AS AMENDED BY P.L.1-2006,
38 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
39 JANUARY 1, 2009]: Sec. 5.1. (a) The commission shall prescribe the
40 form of an application for an absentee ballot.

41 (b) This subsection does not apply to the form for an absentee ballot
42 application to be submitted by an absent uniformed services voter or

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overseas voter that contains a standardized oath for those voters. The form of the application for an absentee ballot must do all of the following:

(1) Require the applicant to swear to or affirm under the penalties of perjury that all of the information set forth on the application is true to the best of the applicant's knowledge and belief.

(2) Require a person who assisted with the completion of the application to swear to or affirm under the penalties of perjury the statements set forth in section 2(f) of this chapter.

(3) Set forth the penalties for perjury.

(c) The form prescribed by the commission shall require that a voter who:

(1) requests an absentee ballot; and

(2) is eligible to vote in the precinct under IC 3-10-11 or IC 3-10-12;

must include the affidavit required by IC 3-10-11 or a written affirmation described in IC 3-10-12.

(d) The form prescribed by the commission must require that a voter who requests an absentee ballot provide one (1) of the following:

(1) A description of and the identification number for the proof of identification the voter would submit if the voter were voting in person.

(2) The last four (4) digits of the voter's Social Security number, if:

(A) the voter does not provide a description of the proof of identification; or

(B) the proof of identification does not have an identification number.

SECTION 3. IC 3-11-4-17, AS AMENDED BY P.L.198-2005, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 17. Upon receipt of an application for an absentee ballot, a circuit court clerk shall file the application in the clerk's office and record all of the following:

(1) The voter's name.

(2) The date the application is received.

(3) The information required under section 5.1(d) of this chapter to be provided by the voter.

~~(4)~~ **(4)** The date the ballot is sent to the voter.

~~(5)~~ **(5)** If mailed, the address to which the ballot is sent.

~~(6)~~ **(6)** If transmitted by fax, the fax number to which the ballot is faxed.

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~~(6)~~ (7) The date the ballot is marked before the clerk or otherwise received from the voter.

~~(7)~~ (8) The combined total number of absentee ballots sent by the county to absent uniformed services voters and overseas voters.

~~(8)~~ (9) The total number of absentee ballots returned by voters described in subdivision ~~(7)~~ (8) in time to be counted.

~~(9)~~ (10) The total number of absentee ballots described in subdivision ~~(7)~~ (8) that were counted in whole or in part.

~~(10)~~ (11) Any other information that is necessary or advisable.

SECTION 4. IC 3-11-4-17.5, AS AMENDED BY P.L.164-2006, SECTION 92, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 17.5. (a) Upon receiving an application for an absentee ballot, the county election board (or the absentee voter board in the office of the circuit court clerk) shall determine if:

(1) the applicant is a voter of the precinct in which the applicant resides, according to the records of the county voter registration office;

(2) the information set forth on the application appears to be true; and

(3) the application has been completed and filed in accordance with Indiana and federal law.

If the members of the absentee voter board are unable to agree about any of the determinations described in subdivisions (1) through (3), the issue shall be referred to the county election board for determination. If the application is submitted by a voter wanting to cast an absentee ballot under IC 3-11-10-26, the voter shall be permitted to cast an absentee ballot, and the voter's absentee ballot shall be treated as a provisional ballot.

(b) If:

(1) the applicant is not a voter of the precinct according to the registration record; or

(2) the application as completed and filed:

(A) contains a false statement; or

(B) does not otherwise comply with Indiana or federal law; as alleged under section 18.5 of this chapter, the county election board shall deny the application.

(c) This subsection applies to an absentee ballot application submitted by an absent uniformed services voter or an overseas voter. In accordance with 42 U.S.C. 1973ff-1(d), if the application is denied, the county election board shall provide the voter with the reasons for the denial of the application. Unless the voter is present when the board denies the application, the board shall send a written notice stating the

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reasons for the denial to the voter. The notice must be sent:

- (1) not later than forty-eight (48) hours after the application is denied; and
- (2) to the voter at the address at which the voter requested that the absentee ballot be mailed.

(d) If the county election board determines that the applicant is a voter of the precinct under subsection (a), the board shall then determine whether:

- (1) the applicant was required to file any additional documentation under IC 3-7-33-4.5 **or provided the information required under section 5.1(d) of this chapter**; and
- (2) the applicant has filed this documentation according to the records of the county voter registration office.

If the applicant has not filed the required documentation, the county election board shall approve the application if the application otherwise complies with this chapter. The board shall add a notation to the application and to the record compiled under section 17 of this chapter indicating that the applicant will be required to provide additional documentation to the county voter registration office under IC 3-7-33-4.5 **or the information required under section 5.1(d) of this chapter** before the absentee ballot may be counted.

(e) If the applicant:

- (1) is a voter of the precinct according to the registration record;
- (2) states on the application that the applicant resides at an address that is within the same precinct but is not the same address shown on the registration record; and
- (3) provides a voter identification number on the application to permit transfer of registration under IC 3-7-13-13;

the county election board shall direct the county voter registration office to transfer the applicant's voter registration address to the address within the precinct shown on the application. The applicant's application for an absentee ballot shall be approved if the applicant is otherwise eligible to receive the ballot under this chapter.

SECTION 5. IC 3-11-4-18, AS AMENDED BY P.L.164-2006, SECTION 93, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 18. (a) If a voter satisfies any of the qualifications described in IC 3-11-10-24 that entitle a voter to cast an absentee ballot by mail, the county election board shall, at the request of the voter, mail the official ballot, postage fully prepaid, to the voter at the address stated in the application.

(b) If the county election board mails an absentee ballot to a voter required to file additional documentation with the county voter

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1 registration office before voting by absentee ballot under this chapter,
 2 the board shall include a notice to the voter in the envelope mailed to
 3 the voter under section 20 of this chapter. The notice must inform the
 4 voter that the voter must file the additional documentation required
 5 under IC 3-7-33-4.5 with the county voter registration office not later
 6 than noon on election day for the absentee ballot to be counted as an
 7 absentee ballot, and that, if the documentation required under
 8 IC 3-7-33-4.5 is filed after noon and before 6 p.m. on election day, the
 9 ballot will be processed as a provisional ballot. **The notice also must**
 10 **inform the voter that the voter must provide the information**
 11 **required under section 5.1(d) of this chapter to the county election**
 12 **board not later than noon on election day for the absentee ballot to**
 13 **be counted as an absentee ballot, and that, if the information**
 14 **required under section 5.1(d) of this chapter is provided after noon**
 15 **and before 6 p.m. on election day, the ballot will be processed as a**
 16 **provisional ballot.** The commission shall prescribe the form of this
 17 notice under IC 3-5-4-8.

18 (c) Except as provided in section 18.5 of this chapter, the ballot
 19 shall be mailed:

- 20 (1) on the day of the receipt of the voter's application; or
- 21 (2) not more than five (5) days after the date of delivery of the
- 22 ballots under section 15 of this chapter;

23 whichever is later.

24 (d) In addition to the ballot mailed under subsection (c), the county
 25 election board shall mail a special absentee ballot for overseas voters.

26 (e) Except as provided in section 18.5 of this chapter, the ballot
 27 described in subsection (d):

- 28 (1) must be mailed:
- 29 (A) on the day of the receipt of the voter's application; or
- 30 (B) not more than five (5) days after the latest date for delivery
- 31 of the ballots under section 13(b) of this chapter applicable to
- 32 that election;

33 whichever is later; and

- 34 (2) may not be mailed after the absentee ballots described by
- 35 section 13(a) of this chapter have been delivered to the circuit
- 36 court clerk or the clerk's authorized deputy.

37 (f) As required by 42 U.S.C. 15481, an election board shall establish
 38 a voter education program (specific to a paper ballot or optical scan
 39 ballot card provided as an absentee ballot under this chapter) to notify
 40 a voter of the effect of casting multiple votes for a single office.

41 (g) As provided by 42 U.S.C. 15481, when an absentee ballot is
 42 mailed under this section, the mailing must include:

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(1) information concerning the effect of casting multiple votes for an office; and

(2) instructions on how to correct the ballot before the ballot is cast and counted, including the issuance of replacement ballots.

SECTION 6. IC 3-11-10-4.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: **Sec. 4.7. (a) Upon receipt of an absentee ballot, the county election board shall determine whether the information required by IC 3-11-4-5.1(d) has been provided by the voter.**

(b) If the voter has provided the information, the county election board shall add a notation to the application indicating that the required information has been provided and that the absentee ballot may be counted if the ballot otherwise complies with this article.

(c) If the voter has not provided the information, the county election board shall add a notation on the application filed by a voter described under subsection (b) and on the envelope provided under this chapter reading substantially as follows:

"INSPECTOR: AS OF (insert date absentee ballot application approved) THIS VOTER WAS REQUIRED TO PROVIDE INFORMATION DESCRIBED IN IC 3-11-4-5.1(d) BEFORE THIS BALLOT MAY BE COUNTED. CHECK THE POLL LIST AND COUNTY ELECTION BOARD CERTIFICATION TO SEE IF THE VOTER HAS PROVIDED THIS INFORMATION. IF NOT, PROCESS AS A PROVISIONAL BALLOT IF THIS BALLOT OTHERWISE COMPLIES WITH INDIANA LAW."

SECTION 7. IC 3-11-10-11, AS AMENDED BY P.L.221-2005, SECTION 70, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: **Sec. 11. (a) On election day each circuit court clerk (or an agent of the clerk) shall visit the appropriate post office to accept delivery of absentee envelopes at the latest possible time that will permit delivery of the ballots to the appropriate precinct election boards before 6 p.m.**

(b) Not later than noon on election day, the county voter registration office shall visit the appropriate post office to accept delivery of mail containing documentation submitted by a voter to comply with IC 3-7-33-4.5. The office shall immediately notify the county election board regarding the filing of this documentation to permit the board to provide certification of this filing to the appropriate precinct election boards before 6 p.m.

(c) Not later than noon on election day, each circuit court clerk

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(or an agent of the clerk) shall visit the appropriate post office to accept delivery of mail containing information provided by a voter to comply with IC 3-11-4-5.1(d). The clerk shall immediately notify the county election board regarding the receipt of this information to permit the board to provide certification that the information was provided to the appropriate precinct election boards before 6 p.m.

SECTION 8. IC 3-11-10-12, AS AMENDED BY P.L.164-2006, SECTION 106, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 12. (a) Each county election board shall have all absentee ballots delivered to the precinct election boards at their respective polls on election day.

(b) The absentee ballots shall be delivered during the hours that the polls are open and in sufficient time to enable the precinct election boards to vote the ballots during the time the polls are open.

(c) Along with the absentee ballots delivered to the precinct election boards under subsection (a), each county election board shall provide a list certified by the circuit court clerk. This list must state the name of each voter subject to IC 3-7-33-4.5 **or IC 3-11-4-5.1(d)** who:

(1) ~~filed the documentation required by IC 3-7-33-4.5 with the county voter registration office~~ after the printing of the certified list under IC 3-7-29 or the poll list under IC 3-11-3:

(A) filed the documentation required by IC 3-7-33-4.5 with the county voter registration office; or

(B) provided the information required by IC 3-11-4-5.1(d);
and

(2) as a result, is entitled to have the voter's absentee ballot counted if the ballot otherwise complies with this title.

(d) If the county election board is notified not later than 3 p.m. on election day by the county voter registration office **or the circuit court clerk** that a voter subject to IC 3-7-33-4.5 **or IC 3-11-4-5.1(d)** and not identified in the list certified under subsection (c) has filed documentation with the office that complies with IC 3-7-33-4.5 **or provided information under IC 3-11-4-5.1(d)**, the county election board shall transmit a supplemental certified list to the appropriate precinct election board. If the board determines that the supplemental list may not be received before the closing of the polls, the board shall:

(1) attempt to contact the precinct election board to inform the board regarding the content of the supplemental list; and

(2) file a copy of the supplemental list for that precinct as part of the permanent records of the board.

(e) This subsection applies to a special write-in absentee ballot

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1 described in:

2 (1) 42 U.S.C. 1973ff for federal offices; and

3 (2) IC 3-11-4-12(a) for state offices.

4 If the county election board receives both a special write-in absentee
5 ballot and the regular absentee ballot described by IC 3-11-4-12 from
6 the same voter, the county election board shall reject the special
7 write-in ballot and deliver only the regular absentee ballot to the
8 precinct election board.

9 SECTION 9. IC 3-11-10-16, AS AMENDED BY P.L.221-2005,
10 SECTION 71, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
11 JANUARY 1, 2009]: Sec. 16. (a) If the inspector finds under section
12 15 of this chapter that:

13 (1) the affidavit is properly executed;

14 (2) the signatures correspond;

15 (3) the absentee voter is a qualified voter of the precinct;

16 (4) the absentee voter is registered and is not required to file
17 additional information with the county voter registration office
18 under IC 3-7-33-4.5;

19 (5) the absentee voter has not voted in person at the election; ~~and~~

20 **(6) the absentee voter has provided the information required**
21 **by IC 3-11-4-5.1(d); and**

22 ~~(6) (7)~~ (7) in case of a primary election, if the absentee voter has not
23 previously voted, the absentee voter has executed the proper
24 declaration relative to age and qualifications and the political
25 party with which the absentee voter intends to affiliate;

26 then the inspector shall open the envelope containing the absentee
27 ballots so as not to deface or destroy the affidavit and take out each
28 ballot enclosed without unfolding or permitting a ballot to be unfolded
29 or examined.

30 (b) The inspector shall then hand the ballots to the judges who shall
31 deposit the ballots in the proper ballot box and enter the absentee
32 voter's name on the poll list, as if the absentee voter had been present
33 and voted in person. The judges shall mark the poll list to indicate that
34 the voter has voted by absentee ballot. If the voter has registered and
35 voted under IC 3-7-36-14, the inspector shall attach to the poll list the
36 circuit court clerk's certification that the voter has registered.

37 SECTION 10. IC 3-11-10-16.5, AS AMENDED BY P.L.221-2005,
38 SECTION 72, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
39 JANUARY 1, 2009]: Sec. 16.5. If the inspector finds under section
40 16(a) of this chapter that the voter has not:

41 **(1) filed the additional information required to be filed with the**
42 **county voter registration office under IC 3-7-33-4.5; or**

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1 **(2) provided the information required by IC 3-11-4-5.1(d);**
 2 but that all of the other findings listed under section 16(a) of this
 3 chapter apply, the inspector shall direct that the absentee ballot be
 4 processed as a provisional ballot under IC 3-11.7.

5 SECTION 11. IC 3-11-10-22, AS AMENDED BY P.L.109-2005,
 6 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 7 JANUARY 1, 2009]: Sec. 22. (a) If an absentee ballot is challenged
 8 under section 21 of this chapter, the absentee voter's application for an
 9 absentee ballot shall be considered as the affidavit required to be made
 10 by a voter when challenged at the polls while voting in person.

11 (b) ~~Except as provided in subsection (c);~~ The challenge procedure
 12 under this section is the same as though the ballot was cast by the voter
 13 in person.

14 (c) An absentee voter is ~~not~~ required to provide ~~proof of~~
 15 ~~identification; the information described in IC 3-11-4-5.1(d).~~

16 (d) If a proper affidavit is made that would entitle the absentee voter
 17 to vote if the absentee voter had personally appeared, then the absentee
 18 ballot shall be placed in the ballot box.

19 SECTION 12. IC 3-11-10-28, AS AMENDED BY P.L.221-2005,
 20 SECTION 73, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 21 JANUARY 1, 2009]: Sec. 28. (a) A voter voting before an absentee
 22 voter board shall mark the voter's ballot in the presence of the board,
 23 but not in such a manner that either of the members of the board can
 24 see for whom the voter voted, unless the voter requests the help of the
 25 board in marking a ballot under IC 3-11-9.

26 (b) The voter shall then, in the presence of the board, place the
 27 ballot in an envelope furnished by the county election board.

28 (c) The circuit court clerk shall provide, to the extent practicable,
 29 the same degree of privacy to absentee voters voting at the office of the
 30 circuit court clerk as provided to voters at the polls on election day.

31 (d) This subsection applies to a voter required to present additional
 32 information under IC 3-7-33-4.5. If the voter does not present the
 33 required additional information before receiving the absentee ballot,
 34 the absentee ballot shall be processed in accordance with section 4.5(c)
 35 of this chapter.

36 (e) Upon accepting the completed absentee ballot from the voter, the
 37 board shall provide the voter with a notice:

- 38 (1) listing the documentation the voter may submit to the county
- 39 voter registration office to comply with IC 3-7-33-4.5; and
- 40 (2) stating the address and hours of the county voter registration
- 41 office.

42 **(f) This subsection applies to a voter required to provide the**

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1 information described in IC 3-11-4-5.1(d). If the voter does not
 2 provide the required information before receiving the absentee
 3 ballot, the absentee ballot shall be processed in accordance with
 4 section 4.7(c) of this chapter.

5 (g) Upon accepting the completed absentee ballot from the
 6 voter, the board shall provide the voter with a notice:

7 (1) listing the information the voter must submit to the county
 8 election board to comply with IC 3-11-4-5.1(d); and

9 (2) stating the address and hours of the circuit court clerk's
 10 office.

11 SECTION 13. IC 3-11.5-4-12, AS AMENDED BY P.L.221-2005,
 12 SECTION 97, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 13 JANUARY 1, 2009]: Sec. 12. (a) If the absentee ballot counters find
 14 under section 11 of this chapter that:

15 (1) the affidavit is properly executed;

16 (2) the signatures correspond;

17 (3) the absentee voter is a qualified voter of the precinct;

18 (4) the absentee voter is registered and is not required to file
 19 additional information with the county voter registration office
 20 under IC 3-7-33-4.5;

21 (5) the absentee voter has not voted in person at the election; ~~and~~

22 **(6) the absentee voter has provided the information described**
 23 **in IC 3-11-4-5.1(d); and**

24 ~~(7)~~ (7) in case of a primary election, if the absentee voter has not
 25 previously voted, the absentee voter has executed the proper
 26 declaration relative to age and qualifications and the political
 27 party with which the absentee voter intends to affiliate;

28 the absentee ballot counters shall open the envelope containing the
 29 absentee ballots so as not to deface or destroy the affidavit and take out
 30 each ballot enclosed without unfolding or permitting a ballot to be
 31 unfolded or examined.

32 (b) If the absentee ballot counters find under subsection (a) that the
 33 voter has not filed the additional information required to be filed with
 34 the county voter registration office under IC 3-7-33-4.5 **or provided**
 35 **the information described in IC 3-11-4-5.1(d)**, but that all of the
 36 other findings listed under subsection (a) apply, the absentee ballot
 37 shall be processed as a provisional ballot under IC 3-11.7.

38 (c) The absentee ballot counters shall then deposit the ballots in a
 39 secure envelope with the name of the precinct set forth on the outside
 40 of the envelope. After the absentee ballot counters or the county
 41 election board has made the findings described in subsection (a) or
 42 section 13 of this chapter for all absentee ballots of the precinct, the

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absentee ballot counters shall remove all the ballots deposited in the envelope under this section for counting under IC 3-11.5-5 or IC 3-11.5-6.

SECTION 14. IC 3-11.5-4-16, AS AMENDED BY P.L.164-2006, SECTION 120, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 16. (a) If an absentee ballot is challenged under section 15 of this chapter, the absentee voter's application for an absentee ballot shall be considered as the affidavit required to be made by a voter when challenged at the polls while voting in person.

(b) ~~Except as provided in subsection (c);~~ The challenge procedure under this section is the same as though the ballot was cast by the voter in person.

(c) An absentee voter is ~~not~~ required to provide ~~proof of identification; the information described in IC 3-11-4-5.1(d).~~

(d) If a proper affidavit by a qualified person in the form required by IC 3-11-8-22.1 is made that would entitle the absentee voter to vote if the absentee voter had personally appeared, the couriers shall return the affidavit to the county election board in the same envelope as the certificate returned under section 9 of this chapter.

(e) The absentee ballot cast by the challenged voter shall be counted if the county election board makes the findings required under section ~~11~~ **12** of this chapter.

SECTION 15. IC 3-11.7-5-2.5, AS ADDED BY P.L.103-2005, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 2.5. (a) A voter who:

(1) was challenged under IC 3-10-1, IC 3-11-8, or ~~IC 3-11-10-26~~ **IC 3-11-10** as a result of the voter's inability or declination to provide proof of identification; and

(2) cast a provisional ballot;

may personally appear before the circuit court clerk or the county election board not later than the deadline specified by section 1 of this chapter for the county election board to determine whether to count a provisional ballot.

(b) Except as provided in subsection (c) or (e), if the voter:

(1) provides proof of identification to the circuit court clerk or county election board; and

(2) executes an affidavit before the clerk or board, in the form prescribed by the commission, affirming under the penalties of perjury that the voter is the same individual who:

(A) **on election day:**

(i) personally appeared before the precinct election board;

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and

~~(B) (ii)~~ cast the provisional ballot; ~~on election day; or~~

(B) voted an absentee ballot that was treated as a provisional ballot on election day;

the county election board shall find that the voter's provisional ballot is valid and direct that the provisional ballot be opened under section 4 of this chapter and processed in accordance with this chapter.

(c) If the voter executes an affidavit before the circuit court clerk or county election board, in the form prescribed by the commission, affirming under the penalties of perjury that:

(1) the voter is the same individual who:

(A) **on election day:**

(i) personally appeared before the precinct election board; and

~~(B) (ii)~~ cast the provisional ballot on election day; or

(B) voted an absentee ballot that was treated as a provisional ballot on election day; and

(2) the voter:

(A) is:

(i) indigent; and

(ii) unable to obtain proof of identification without the payment of a fee; or

(B) has a religious objection to being photographed;

the county election board shall determine whether the voter has been challenged for any reason other than the voter's inability or declination to present proof of identification to the precinct election board.

(d) If the county election board determines that the voter described in subsection (c) has been challenged solely for the inability or declination of the voter to provide proof of identification, the county election board shall:

(1) find that the voter's provisional ballot is valid; and

(2) direct that the provisional ballot be:

(A) opened under section 4 of this chapter; and

(B) processed in accordance with this chapter.

(e) If the county election board determines that a voter described in subsection (b) or (c) has been challenged for a cause other than the voter's inability or declination to provide proof of identification, the board shall:

(1) note on the envelope containing the provisional ballot that the voter has complied with the proof of identification requirement; and

(2) proceed to determine the validity of the remaining challenges

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set forth in the challenge affidavit before ruling on the validity of the voter's provisional ballot.

(f) If a voter described by subsection (a) fails by the deadline for counting provisional ballots referenced in subsection (a) to:

(1) appear before the county election board; and

(2) execute an affidavit in the manner prescribed by subsection

(b) or (c);

the county election board shall find that the voter's provisional ballot is invalid.

SECTION 16. IC 3-11.7-5-3, AS AMENDED BY P.L.103-2005, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 3. (a) If the board determines that the affidavit executed by the provisional voter has not been properly executed, that the provisional voter is not a qualified voter of the precinct, that the voter failed to provide proof of identification when required under IC 3-10-1, IC 3-11-8, or ~~IC 3-11-10-26~~, IC 3-11-10, or that the provisional voter did not register to vote at a registration agency under this article on a date within the registration period, the board shall make the following findings:

(1) The provisional ballot is invalid.

(2) The provisional ballot may not be counted.

(3) The provisional ballot envelope containing the ballots cast by the provisional voter may not be opened.

(b) If the county election board determines that a provisional ballot is invalid, a notation shall be made on the provisional ballot envelope: "Provisional ballot determined invalid".

SECTION 17. IC 3-11-10-1.2 IS REPEALED [EFFECTIVE JANUARY 1, 2009].

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